

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PENDLETON FLOUR MILLS, LLC,

Plaintiff,

vs.

ROY N. CARLSON, INC.,

Defendant.

Case No. 3:13-cv-05716 BHS

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extend only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. 'CONFIDENTIAL' MATERIAL

'Confidential' material shall include the following documents and tangible things produced or otherwise exchanged:

- (A) Plaintiff's contracts with customers containing confidential pricing data;
- (B) Plaintiff's contracts with suppliers containing confidential pricing data and/or confidential and proprietary product specifications; and
- (C) Any other documents referencing plaintiff's confidential pricing data or confidential and proprietary product specifications.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) and testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

1 4.2 Disclosures of "CONFIDENTIAL" Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the designating party, a receiving party may
3 disclose any confidential material only to:

4 (a) the receiving party's counsel of record in this action, as well as employees of
5 counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in-house counsel) of the
7 receiving party to whom disclosure is necessary for this litigation, unless the parties agree that a
8 particular document or material produced is for Attorney's Eyes Only and is so designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for this
10 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the duplication of
13 confidential material, provided that counsel for the party retaining the copy or imaging service
14 instructs the service not to disclose any confidential material to third parties and to immediately
15 return all originals and copies of any confidential information;

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
18 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
19 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
20 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
21 under this agreement;

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

1 4.3 Filing Confidential Material. Before filing confidential material or
2 discussing or referencing such material in court filings, the filing party shall confer with the
3 designating party to determine whether the designating party will remove the confidential
4 designation, whether the document can be redacted, or whether a motion to seal or stipulation
5 and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
6 followed and the standards that will be applied when a party seeks permission from the court to
7 file material under seal.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each party or non-party that designates information or items for protection under this agreement
11 must take care to limit any such designation to specific material that qualifies under the
12 appropriate standards. The designating party must designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify, so that other portions
14 of the material, documents, items, or communications for which protection is not warranted are
15 not swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified or that have been made for an improper purpose (e.g. to
18 unnecessarily encumber or delay the case development process or to impose unnecessary
19 expenses and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it designated
21 for protection do not qualify for protection, the designating party must promptly notify all other
22 parties that it is withdrawing the mistaken designation.

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1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, e.g. second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must
4 be clearly so designated before or when the material is disclosed or produced.

5 (a) Information in documentary form: (e.g. paper or electronic documents and
6 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
7 the designating party must affix the word "CONFIDENTIAL" to each page that contains
8 confidential material. If only a portion of portions of the material or page qualifies for
9 protection, the producing party also must clearly identify the protected portion(s) (e.g. by making
10 appropriate markings in the margins).

11 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
12 parties must identify on the record, during the deposition, hearing, or other proceeding, all
13 protected testimony, without prejudice to their right to so designate other testimony after
14 reviewing the transcript. Any party or non-party, within fifteen days after receiving a deposition
15 transcript, designate portions of the transcript, or exhibits thereto, as confidential.

16 (c) Other tangible items: the producing party must affix in a prominent place on
17 the exterior of the container or containers in which the information or item is stored the word
18 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
19 the producing party, to the extent practicable, shall identify the protected portions(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
21 failure to designate qualified information or items does not, standing alone, waive the
22 designating party's right to secure protection under this agreement for such material. Upon
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1 timely correction of a designation, the receiving party must make reasonable efforts to ensure
2 that the material is treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a designating party's
6 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
7 economic burdens, or a significant disruption or delay of the litigation, a party does not waive its
8 right to challenge a confidentiality designation by electing not to mount a challenge promptly
9 after the original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any
11 dispute regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion or in
13 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
14 conference with other affected parties in an effort to resolve the dispute without court action.
15 The certification must list the date, manner, and participants to the conference. A good faith
16 effort to confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
18 court intervention, the designating party may file and serve a motion to retain confidentiality
19 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
20 burden of persuasion in any such motion shall be on the designating party. Frivolous challenges,
21 and those made for an improper purpose (e.g. to harass or impose unnecessary expenses and

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1 burdens on other parties) may expose the challenging party to sanctions. All parties shall
2 continue to maintain the material in question as confidential until the court rules on the
3 challenge.

4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
8 must:

9 (a) promptly notify the designating party in writing and include a copy of the
10 subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue
12 in the other litigation that some or all of the material covered by the subpoena or order is subject
13 to this agreement. Such notification shall include a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by
15 the designating party whose confidential material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
18 material to any person on in any circumstance not authorized under this agreement, the receiving
19 party must immediately (a) notify in writing the designating party of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
21 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
22 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(b). This provision is not intended to modify whatever procedure may be
7 established in an e-discovery order or agreement that provides for production without prior
8 privilege review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid.
9 502.

10 10. NON-TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of action, including all appeals, each receiving party
12 must return all confidential material to the producing party, including all copies, extracts, and
13 summaries thereof. Alternatively, the parties may agree upon appropriate methods of
14 destruction.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
16 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
18 work product, even if such materials contain confidential material.

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1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court order otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED this 30th date of December, 2013.

5
6 /s/ David J. Sweeney

David J. Sweeney, WSBA# 35419
dsweeney@brownsteinrask.com
Attorney for Plaintiff

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9 /s/ Dylan E. Jackson

Dylan E. Jackson, WSBA# 29220
jackson@wscd.com
Attorney for Defendant

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11 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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13 DATED 1/2/13

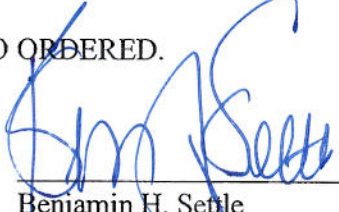

Benjamin H. Settle
United State District Judge

EXHIBIT A

I, _____ [print or type full name], of
_____, [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on
_____ [date] in the case of Pendleton Flour Mills, LLC, v. Roy N. Carlson, Inc., Case
No. 3:13-cv-05716-BHS. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
exposed me to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of the Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and state where sworn and signed: _____

Printed name: _____

Signature: _____